

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 06-CR-320

DAVID R. OLOFSON,
Defendant.

DEFENDANT'S MOTION TO COMPEL DISCOVERY

DAVID OLOFSON, by counsel, asks the Court to compel the government to disclose the following evidence:

1. All documents pertaining to the 10/20/06 and 11/20/06 reports of technical examination, including but not limited to: work notes, work sheets, personal notes, photographs, video, audio, management directives, e-mail, etc.
2. Copy of the published testing procedures used in FTB testing and examination of defendant's firearm, as well as whether those procedures are publically available.
3. All training certificates, diplomas, levels of expertise, etc., on the AR-15 and M-16 firearms for SA Jody M. Keeku.
4. All ATF correspondence to and from SGW and Olympic Arms regarding the use of M-16 triggers, hammers, disconnectors and safety selectors in AR-15 type firearms, specifically between 1980 and 1990.
5. All documents concerning the removal, correction or update of any AR-15 type rifles with M-16 components from the NFRTR (NFA registry) from 1986 to present, specifically but not limited to entries

made by: Rick Vazquez and Sterling Nixon of the FTB and Ken Houtchens and Gary Shiabes of NFA.

6. All documents relating to the refusal to accept any AR-15 type firearm with M-16 components for registration on the NFRTR
7. All FTB letters of classification, determination, etc. of a "shoe lace" being determined a machine gun or "string trick," specifically including 1996 to present.
8. All documents relating to the removal of Mr. Sterling Nixon from his position of Firearms Technology Branch Chief. This information can be obtained from the ATF director's office from Lou Raden or Audry Stucko.

Counsel for Olofson has previously requested these items from the government by letters dated September 25, 2007¹ and December 10, 2007 (copies of the letters are attached hereto). The items requested are essential to Olofson's defense and are also needed to present to Olofson's expert witness before Olofson can provide the government with a summary of expert testimony as required by FED. R. CRIM. P. 16(b)(1)(C).

The requested items will help to demonstrate that ATF has determined that the particular Olympic Arms rifle at issue here is *not* a machine gun. As such, these

¹In this letter, Olofson also requested the following items: (1) Copy of ATF Ruling 81-4; (2) ATF "Open Letter," Federal Firearms Licensee News Publication, issued in the fall of 1986; (3) *United States v. Corcoran*, Case No. 88-11 (W.D. Pa. April 5, 1988), transcript pages 39-40, which should be available to you from ATF Chief Counsel's Office; (4) ATF March 11, 1986 memorandum concerning the use of M-16 components in AR-15 type rifles; (5) *United States v. Staples*, N.D. Oklahoma (Judgment entered February 21, 1991), testimony of BATF agent McLaughlin, which should be available to you from ATF Chief Counsel's Office. The government responded in a phone call that it will not provide these items to Olofson as they can be obtained elsewhere. Additionally, the government indicated that if these items are obtained from other sources, it would not challenge the authenticity of the documents.

items constitute exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and the Fifth Amendment's Due Process Clause imposes a burden on the prosecutor to "learn of any favorable evidence known to others acting on the government's behalf." *United States v. Hamilton*, 107 F.3d 499, 509 (7th Cir. 1997).

Dated at Milwaukee, Wisconsin, December 28, 2007.

Respectfully submitted,

/s/ Brian T. Fahl

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